

1 Introduction

The Pipeline Safety Enforcement Procedures are for internal use by the Pipeline and Hazardous Materials Safety Administration (PHMSA), and are maintained by PHMSA's Office of Pipeline Safety's (PHMSA-Pipeline's) Enforcement Division. If a conflict exists between these procedures and 49 C.F.R. Part 190, the regulations in Part 190 control.

PHMSA-Pipeline's enforcement program uses a risk-based strategy to promote safety, reliability and environmental protection. PHMSA applies a variety of enforcement tools, designed to be fair, consistent, and timely to foster a strong safety culture in the regulated community. As a key component of PHMSA's oversight mission, the enforcement program is designed to ensure that pipeline operators are in full compliance with pipeline safety regulations, and are meeting PHMSA's expectations for safe, reliable, and environmentally sound operation of their facilities. Using web-based technologies and other measures, PHMSA-Pipeline makes its enforcement process readily accessible and transparent.

PHMSA assures compliance through field inspections of facilities and construction projects; programmatic inspections of operator management systems, procedures, and processes; incident investigations; and direct dialogue with operator management. To facilitate compliance, PHMSA clarifies its regulatory expectations with published inspection forms and protocols; rule interpretations; posting of final orders on its website; guidance manuals and advisory notices; FAQs (frequently asked questions); and public meetings and workshops.

At the conclusion of the inspection process, PHMSA has a range of enforcement tools at its disposal to ensure that operators take appropriate and timely corrective actions for violations, and that they take necessary preventive measures to preclude future failures or non-compliant operation of their pipelines. These enforcement procedures describe processes used by PHMSA in undertaking pipeline enforcement activities. This manual describes these enforcement tools, as well as the processes established to assure their proper application and implementation. Enforcement must be used in a manner consistent with due process, basic fairness, and respect for individual liberty and private property.

No Federal employee or contractor may participate in a DOT enforcement action in any capacity, if that person has (1) a financial or other personal interest that would be affected by the outcome of the enforcement action; (2) personal animus against a party to the action or against a group to which a party belongs; (3) prejudgment of the adjudicative facts at issue in the proceeding; or (4) any other prohibited conflict of interest.

Nothing in these procedures is intended to diminish or otherwise affect the authority of PHMSA to carry out its statutory, regulatory and other official functions or to commit PHMSA to taking any action that is subject to its discretion. Nothing in this document is intended to and does not create any legal or equitable right or benefit, substantive or procedural, enforceable at law by any person or organization against PHMSA, its personnel, State agencies or officers carrying out programs authorized under Federal law. The materials in this document may be modified or revoked without prior notice by PHMSA.

1.1 Purpose

The purpose of these enforcement procedures is to clarify and document the policy and procedures of PHMSA's pipeline enforcement Program. This is being done to ensure that all employees participating in the enforcement process understand the agency's expectations for carrying out this policy and these procedures. This manual, which applies throughout the entire enforcement process, addresses PHMSA's enforcement of the statutes and regulations and defines the roles, responsibilities, and steps in implementing this policy and these procedures.

1.2 State Partner Agencies

While PHMSA has the primary responsibility for developing, issuing, and enforcing pipeline safety regulations covering both interstate and intrastate pipeline facilities, the pipeline safety statutes provide for delegation to State agencies of the regulatory, inspection, and enforcement responsibilities for intrastate pipeline facilities under an annual certification program (49 USC 60105). Alternatively, a State Agency which does not satisfy the criteria for certification may enter into an agreement (49 USC 60106(a)) to undertake certain aspects of the pipeline safety program for intrastate facilities on behalf of PHMSA-Pipeline. While the State Agency operating under a 60106(a) agreement will inspect pipeline operators to ascertain compliance with Federal safety regulations, any probable violations or deficiencies are reported to PHMSA-Pipeline for enforcement action.

Additionally, PHMSA-Pipeline may authorize a State to act as its agent to inspect interstate pipelines (49 USC 60106(b)). In these situations, any probable violations or deficiencies are reported to PHMSA-Pipeline for enforcement action.

1.3 Authority

1.3.1 Statutory

The Natural Gas Pipeline Safety Act of 1968 as amended (NGPSA) authorized PHMSA to regulate pipeline transportation of natural (flammable, toxic, or corrosive) gas and other gases as well as the transportation and storage of liquefied natural gas (LNG). Similarly, the Hazardous Liquid Pipeline Safety Act of 1979 as amended (HLPESA) authorized PHMSA to regulate pipeline transportation of hazardous liquids (crude oil, petroleum products, and anhydrous ammonia) and carbon dioxide. These laws have been consolidated, codified, and amended over the years. PHMSA's statutory authority is codified in Chapter 601 of title 49, U.S. Code (49 U.S.C. 60101 et seq.).

1.3.2 Regulatory

PHMSA's pipeline safety program is implemented through the Pipeline Safety Rules contained in 49 C.F.R. Parts 190-199. 49 C.F.R. Part 190 Subpart B – Enforcement describes the enforcement authority and sanctions exercised by PHMSA. This Subpart also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

1.3.3 Referral to the Department of Justice

In addition to the abovementioned authorities, the Secretary of Transportation may request the Attorney General under 49 U.S.C. 60120(a) to bring civil action to enforce pipeline safety laws, or to enforce the implementing regulations or orders issued pursuant to these laws. By acting through the Department of Transportation's Office of Inspector General (OIG), PHMSA-Pipeline may refer cases to the Attorney General for criminal prosecution and enforcement as well.

1.4 Overview of the Enforcement Manual

These procedures begin with this Introduction (Section 1).

The procedures for criminal enforcement, the Criminal Enforcement & OIG Coordination (Section 2), are included.

These procedures provide guidance for the selection of administrative enforcement proceedings (Section 3), which include a description of the available enforcement tools and how and when they are used.

Accompanying these enforcement action descriptions are cross functional diagrams (Section 4) that illustrate the major steps in processing the different types of enforcement cases as a case proceeds from initiation to closure. The diagrams identify individual responsibilities for completing each step, and how documents and information flow between different individuals and organizations in processing cases.

Recordkeeping and data management procedures are provided (Section 5), including the securing of enforcement documents, maintenance of the Compliance Registry, and maintenance of the public enforcement transparency website.

The procedures also provide processes for enforcement actions involving third party excavators (Section 7) for probable violations of 49 C.F.R. Part 196, *Protection of Underground Pipelines from Excavation Activity*. Under 49 U.S.C. § 60114(f), OPS is authorized to exercise this enforcement authority only where States have been determined by OPS to have inadequate damage prevention programs. This determination is based on the criteria established in 49 C.F.R. Part 198, *Regulations for Grants to Aid State Pipeline Safety Programs*. In addition to these procedures, the Enforcement Division's SharePoint site provides template documents for various letters such as: requests for information, various enforcement notice letters, and response options for pipeline operators, and the Violation Report. Enforcement Guidance is provided on topics including O&M, corrosion control, integrity management, OQ, and public awareness. The Enforcement Guidance is also available online at PHMSA's website on the Enforcement home page.